

SENATE BILL 1303
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 11, Chapter 4; Title 67, Chapter 7 and Section 70-1-305, to enact the "Tennessee Forest Practices Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 11, Chapter 4, is amended by adding Sections 2 through 20 of this act as a new, appropriately designated part.

SECTION 2. This act shall be known and may be cited as the "Tennessee Forest Practices Act".

SECTION 3. The Tennessee General Assembly finds that:

(1) Tennessee forests are vitally important to people of this state and provide many benefits, including soil protection, flood control, protection of water quality, wildlife habitat and native biological diversity, outdoor recreation opportunities, and aesthetics. They also provide forest products and jobs, thus benefiting the state's economy;

(2) Unregulated timber harvesting can cause soil erosion, landslides and stream pollution, can affect fish and wildlife, can contribute to flooding, and can create other conditions inimical to property and the public welfare so as to make necessary the state's regulation of forestry practices;

(3) Best management practices have been written, but have not been adopted as law, and such best management practices and other standards should be made applicable on private and public lands; and

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(4) It is in the interest of the state to encourage and maintain healthy, biodiverse forests that are managed with sustainable forest practices. Overharvesting and excessive conversion of Tennessee forests for pulpwood is not in the state's interest. It is in the state's interest to encourage value-added uses of forest products.

SECTION 4. For the purposes of this act:

(1) "Basal area" means the area in square feet of the cross section of a tree taken at breast height (four and one-half (4.5) feet above the ground);

(2) "Chipmill" means a mobile or stationary facility which converts timber to chips to be used as pulpwood;

(3) "Commercial harvesting" means the cutting of timber, the removal of timber, the construction of roads or trails or the alteration or use of existing roads or trails, and all other surface disturbances associated with the cutting and removal of timber for the sale or barter of the timber harvested;

(4) "Commission" means the Tennessee forestry commission;

(5) "Commissioner" means the commissioner of the department of environment and conservation or the commissioner's designee;

(6) "Division" means the division of forestry;

(7) "Drain area" means the area in which timber is being, has been or will be harvested;

(8) "Fifty percent (50%) basal area" means one-half (1/2) the cumulative total of basal area of all live trees five inches (5") or more in diameter at breast height, before any trees have been removed from a specified area;

(9) "Landing site" means the area where forest products are concentrated prior to being skidded to an on-site mill or loaded for transport out of the harvesting area;

(10) "Landowner" means a person who owns title to land surface;

(11) "Master logger" means a person who has been licensed by the division to conduct or oversee a harvesting operation that requires a permit pursuant to this act;

(12) "Operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting;

(13) "Person" means an individual, partnership, corporation, or any other association of individuals;

(14) "Pulpwood" means trees severed from the ground, both hardwood and softwood, whether whole or part, that are ground or chipped and manufactured into salable wood or paper products;

(15) "Revegetation plan" means the plan developed to comply with best management practice regulations relative to revegetation promulgated pursuant to this act;

(16) "Riparian forest buffer zone" means a forested zone along the length of a stream, river or lake, or segment thereof, which encompasses all or portions of an area which should be regulated, managed or protected;

(17) "Surface disturbances" means the construction of roads, landing sites, and other impacts on the surface of land associated with timber harvesting; and

(18) "Timber harvesting" means the cutting of timber, the removal of timber, the construction of roads or trails or the alteration of existing roads or trails, and all other surface disturbances associated with the cutting or removal of timber; and

(19) "Timber owner" means a person who has purchased timber for harvest or who owns timber that has been legally separated from the land through a deed transaction.

SECTION 5. The commissioner shall exercise the following authority and powers:

(1) Administer and enforce the provisions of this part and all rules and regulations and orders promulgated thereunder;

(2) Promulgate general rules and regulations pertaining to timbering to accomplish the purposes of this part. Such rules and regulations shall be of uniform application as far as practicable;

(3) Issue orders requiring the adoption by an operator of remedial measures necessary for carrying out the provisions of this part or rules and regulations promulgated thereunder;

(4) Promulgate rules and regulations, to be known as “forestry best management practices”, that are acceptable for timbering and that are designed to achieve soil stabilization, control soil erosion and ensure that the operation meets applicable soil and water quality standards;

(5) Conduct such investigations or inspections as the commissioner may deem necessary to ensure compliance with any provision of this part, including the right to enter at any time upon an affected area for such purposes and the right to ingress and egress across intervening properties;

(6) Issue permits and licenses as provided by this act;

(7) Order the suspension and/or revocation of any permit or license, or otherwise impose appropriate discipline, for failure to comply with any of the provisions of this part or with any rules, regulations or orders promulgated pursuant thereunder;

(8) Order the immediate cessation of any operation that is started or continued without a permit as required by the provisions of this part; and

(9) Institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued by the commissioner in carrying out the provisions of this part.

SECTION 6.

(a) Any person who intends to engage in commercial harvesting on twenty (20) or fewer acres within a year shall submit to the commissioner the following:

- (1) The name and address of the landowner, timber owner, and operator;
 - (2) A legal description of the area to be harvested; and
 - (3) The number of acres to be harvested.
- (b) The notice of intent shall be accompanied by a fee of twenty-five dollars (\$25.00).
- (c) The provisions of this section do not apply to the following activities:
 - (1) Cutting for clearance or maintenance of rights-of-way for public utilities and public highways;
 - (2) Maintenance cutting in pastures;
 - (3) The cutting of any amount of forest products that is not for sale or barter, but is for the non-commercial use of the landowner or the landowner's tenant;
 - (4) The clearing of land for cultivation or pasture when supported by physical evidence of such changed land use within one (1) year after the cutting stops; and
 - (5) The clearing of land for the purpose of changing land use, such as the creation of a house lot or a subdivision, for mining or for any other activity requiring town, city or state permits, when supported by the issuance of the necessary permits before the start of cutting.
- (d) Any person proposing to cut trees who is not certain if the operation is exempt under Section 5(c) may request a determination from the commissioner.

SECTION 7.

- (a) Permits shall be required for commercial harvesting on twenty (20) or more acres within one (1) year.

(b) A landowner or timber owner who intends to engage in commercial harvesting on twenty (20) or more acres within one (1) year shall submit a permit application to the commissioner with the following information:

- (1) The name and address of the landowner, timber owner and operator;
- (2) A legal description of the area to be harvested;
- (3) The number of acres to be harvested;
- (4) The harvesting method to be used;
- (5.) A map indicating the area to be harvested, the location of streams, the proposed or existing roads to be used, and the location and size of landing sites;
- (6) An indication of whether harvested wood will be used for pulpwood or sawtimber;
- (7) The purchaser of timber being harvested;
- (8) A list of all previous notices of violations or cessation orders received by the operator or applicant within the last five (5) years;
- (9) A description of measures, including the width of the riparian forest buffer zone and details about crossing of waterways, including drybeds, to prevent water pollution problems;
- (10) An indication that notice has been sent to any landowner owning property within two hundred feet (200) of the harvesting area; and
- (11) A revegetation plan.

(c) The permit application shall be accompanied by a fee set by the commissioner. Such fees shall be expended in implementing this act.

SECTION 8.

(a) The person filing the permit application shall, on a form developed by the commissioner, send notice to adjacent landowners owning property within two hundred

(200) feet (200) of a proposed harvesting area. The notice shall be sent by certified or registered mail, return receipt requested, at the same time as the permit application is filed with the commissioner. The notice shall include the following:

- (1) The name and address of the landowner, timber owner and operator;
- (2) A legal description of the land to be harvested;
- (3) The method of harvesting to be used;
- (4) The number of acres to be harvested; and
- (5) The address and phone number of the commissioner and the number of days within which public comment is permitted.

(b) In a situation in which a landowner does not own timber rights through a separation by deed, prior to filing a permit application the timber owner shall mail by certified or registered mail, return receipt requested, a copy of permit application to the landowners specified in subsection (a) along with a map showing the location of all surface disturbances including but not limited to roads, stream crossings, and landing sites, as well as a map of areas to be harvested. The timber owner or designated representative and the landowners specified in subsection (a) shall attempt to reach agreement about where surface disturbances shall be placed so as to minimize their impact on the use of land surface. If the two (2) parties cannot reach agreement, after the permit application is submitted, the landowner shall have the right to submit comments to the commissioner and, after having heard from timber owner and landowner, the commissioner shall decide where surface disturbances shall be located, based on minimizing impact on use of land surface.

(c) The commissioner shall send to each member of the public who has requested such information, notification about Notice of Intent or permit applications filed with the commissioner.

(d) The commissioner shall also mail notices of permit applications to interested agencies including, but not limited to, the division of water pollution control and the Tennessee wildlife resources agency.

(e) Comments from persons may be submitted within thirty (30) days of the permit being filed. The commissioner shall respond in writing to any person filing written comments within sixty (60) days of such comments being received.

SECTION 9.

(a) No fewer than thirty (30) days after a permit application has been filed, the commissioner shall approve or deny the permit.

(b) The permit shall be denied if:

(1) The operator has intentionally misrepresented or concealed any material fact which would have resulted in the denial of the application or obtained a permit by intentional misrepresentation or concealment of a material fact which would have resulted in the permit being denied;

(2) Either the applicant or master logger has outstanding, non-abated violations or cessation orders;

(3) The license of the master logger listed as the operator has been revoked;

(4) The harvesting conflicts with local laws or zoning ordinances;

(5) The harvest plan does not meet performance standards; or

(6) In the commissioner's assessment, the proposed harvest plan would result in the likelihood of flooding, the degradation of streams or wetlands, or in other ways result in erosion or other detrimental effects to water quality.

SECTION 10.

(a) The following persons shall apply to the commissioner for a permit:

(1) Any chipmill or other facility that intends to use as much as two hundred fifty thousand (250,000) tons of pulpwood forest resources in a year;

(2) Any existing chipmill or facility intending to increase capacity or usage of pulpwood. The increase shall be additional usage that is more than the usage listed on public records of permits or permit applications previously submitted to any agency; and

(3) A staging operation transporting over two hundred fifty thousand (250,000) tons of whole logs destined for a chipmill or other facility using pulpwood.

(b) Information required on a permit application shall include, but not be limited to, the following:

(1) The name and address of the owner of the facility;

(2) The location of the facility; and

(3) The number of tons of pulpwood forest resources to be used in a year.

(c) The permit application shall be accompanied by a fee of two thousand dollars (\$2,000) to be used for the permitting process, including the forest resource study.

(d) The commissioner shall send to each member of the public and interested agency who has requested such information, notification about applications filed pursuant to this part. Comments from persons shall be submitted within thirty (30) days of the permit being filed. The commissioner shall respond in writing to any person filing written comments within sixty (60) days of such comments being received.

(e)

(1) Upon receipt of a permit application, the commissioner shall perform a resource study to determine whether there are sufficient forest resources in the drain area or areas to support that facility, taking into account the drain area of

existing facilities. The drain area shall be calculated on the maximum possible capacity of the facility.

(2) The commissioner shall deny the permit if the commissioner determines that insufficient forest resources exist for the facility.

SECTION 11.

(a) For all commercial harvesting conducted pursuant to Sections 6 and 7, the commissioner shall promulgate regulations for performance standards for timbering operations as follows.

(b) Regulations shall be promulgated to require a harvesting operation to follow best management practices at least as stringent as the practices delineated in the document "Guide to Forestry Best Management Practices," 1993 edition, heretofore promulgated by the division of forestry. Regulations shall be promulgated in the following areas at a minimum:

(1) Locating and constructing forest roads, including planning, design and location, constructing the road, and drainage from road surfaces;

(2) Planning the timber harvest, including locating log landings and skid trails;

(3) Slash treatment and site preparation;

(4) Providing for revegetation of disturbed areas; and

(5) Special considerations in forested wetlands.

(c) In order to protect the streams of the state, a riparian forest buffer shall be set according to the following functions:

(1) To prevent erosion and sediment runoff and to protect water quality a buffer shall be established with widths relative to the slope of disturbed area to the stream. The buffer width in feet shall equal four (4) times the percent of slope plus fifty (50) feet.

(2) Riparian forest buffers provide minimal habitat protection for wildlife species using the riparian zone. A permit application received by the commissioner that proposes to harvest timber in an area that would have impact on or is adjacent to a state park, state natural area, state forest or wildlife management area or federally owned land shall be reviewed by the Tennessee wildlife resource agency. The Tennessee wildlife resource agency shall review the proposed riparian forest buffer zone for wildlife known to be in the area, taking into consideration streamside habitats of both game and non-game species and travel corridors. Tennessee Wildlife Resources Agency shall submit comments to the commissioner relative to the minimum and/or maximum widths, in addition to subdivision (b)(1), necessary to protect the species of wildlife that can be expected to inhabit or use the riparian forest buffer. Tennessee Wildlife Resources Agency, in its discretion and in lieu of reviewing each permit application, may submit to the division of forestry, within six (6) months of the effective date of this act, a list of the more common wildlife species to be found in riparian forested zones and the recommended widths of riparian forest buffers necessary to protect the habitats of such wildlife; and

(3) Buffer zones that are one hundred feet (100) or less shall not be cut except in special circumstances, such as the removal of fallen trees threatening to block the flow of streams. In buffer zones greater than one hundred feet (100), in the area beyond one hundred feet, (100) up to fifty percent (50%) of the basal area may be cut at any one (1) time. The residual stand shall be composed of healthy growing trees well distributed over the area. A minimum waiting period of five (5) years shall elapse before another cut is made.

SECTION 12.

(a) The commissioner and the commissioner's designees shall have the right to enter upon land to ensure compliance with this act.

(b) The division shall make inspections before, during, and after harvesting operations requiring a permit.

(c) The division may also make inspections on harvesting operations requiring a notice of intent.

SECTION 13.

(a) Upon finding a violation of any provision of this act, the division shall issue a notice of violation to the responsible landowner, timber owner or operator. Such notice shall describe the violation, prescribe remedial action to be taken by the responsible party, and specify a date by which such remedial action shall be completed.

(b) If the responsible party fails to satisfactorily perform such remedial action by the specified date, the commissioner may order all harvesting activity to cease until such remedial action is satisfactorily performed.

SECTION 14.

(a) Any citizen having information that violations of this act may be occurring may file a complaint with the division. The division shall respond promptly to the complaint by conducting an inspection on land described in the complaint within ten (10) working days. The division shall notify the complainant within thirty (30) days about findings during the inspection and action taken.

(b) The complainant shall have standing as a matter of law to challenge the division's determination of the complaint.

SECTION 15.

(a) (1) Any person who violates any of the provisions of this act shall be subject to a civil penalty of not more than five thousand dollars (\$5,000). Each day of a continuing violation shall constitute a separate violation. Civil penalties collected shall be

retained by the division of forestry to be used for the administration and enforcement of this act.

(2) In determining the amount of the civil penalty, the commissioner shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this act.

(b) Any person who knowingly or willfully violates any provision of the act or who knowingly or willfully initiates or continues harvesting activity subject to Section 4 of this act without a permit shall be guilty of a Class A misdemeanor.

(c) Any person against whom an assessment has been issued pursuant to this section may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing in the matter involved before the commission. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is issued, the violator shall be deemed to have consented to the assessment and it shall become final.

SECTION 16. Any landowner, timber owner, or operator or any person who has submitted comments to the division pursuant to Section 6, if aggrieved by the decision of the commissioner, may appeal to the Tennessee forestry commission. The appeal shall be filed within thirty (30) calendar days of the commissioner's decision. Any aggrieved person shall have standing as a matter of law in appealing the decision of the commissioner. All such appeals shall be conducted in accordance with the Uniform Administrative Procedures Act, codified at title 4, chapter 5.

SECTION 17. Any final order or determination by the commission shall be subject to judicial review, and venue and jurisdiction for such action shall be in the chancery court of

Davidson County or the chancery court in the judicial district in which the harvesting operation is located.

SECTION 18. The division of forestry, charged under this act with the regulatory oversight of timber harvesting in Tennessee, and the Tennessee forestry commission are hereby transferred from the department of agriculture to the department of environment and conservation. In future reorganizations, the division of forestry shall be administratively attached to the same executive department as the regulatory division or other state agency that is charged with the responsibility of overseeing water pollution control.

SECTION 19.

(a) Any person conducting or overseeing a harvesting operation that requires a permit pursuant to Section 6 shall obtain a master logger license. The division shall design the educational program the master logger is required to complete to obtain a license. A fee of two hundred dollars (\$200) is imposed to obtain a master logger license. A licensed master logger may subcontract the harvesting operation to a second party who does not have such license provided, however, the licensed master logger is still responsible for fulfilling requirements of this act.

(b) If a master logger receives three (3) or more notices of violation within a three (3) year period, such master logger's license shall be revoked for at least one (1) year.

(c) The master logger shall post a sign, in a form designated by the division of forestry, in a conspicuous place near the permitted site stating:

(1) The name, business address, and phone number of the master logger;

(2) The name, address and phone number of subcontractors working for the master logger;

- (3) A description of the permitted logging site, sufficient to identify property;
 - (4) The number of acres and a legal description of the site;
 - (5) The name and address of the owner and the purchaser of the timber;
 - and
 - (6) The telephone number of the division of forestry and the business telephone number of the local forester.
- (d) The master logger shall notify the division upon the completion of harvesting.

SECTION 20.

- (a) The division shall inventory at least twenty percent (20%) of all forest and non-forest plots per county per year such that a complete and comprehensive survey of all forest and not-forest plots within the state of Tennessee are inventoried within five (5) years and on an annual basis for the preceding five (5) years. All surveys and all annual and five (5) year reports shall be thorough and comprehensive and aimed at assessing for multiple resources and values as specified in "The Forest Survey Inventory Work Plan, Tennessee 1996-1998," Forest Inventory Analysis Research Work Unit, U.S. Forest Service, Southern Research Station, Asheville, North Carolina, 1996. Reporting of survey data shall include annual reporting of drain rates per county and shall list and graphically depict data collected within the past twelve (12) months, as well as data collected for each twelve (12) month period for the preceding five (5) years such that each annual report provides data from all forest and non-forest plots within each county. These reports shall also include projected drain rates for the succeeding five (5) years. Neither fees nor severance taxes imposed by this act shall be used to fund survey work.
- (b) Survey information shall be made readily available to the public upon request.

SECTION 21. Tennessee Code Annotated, Section 70-1-305, is amended by adding the following new subdivision thereto:

() Pursuant to Section 11(c)(2) of this act, review timber harvest applications that impact on or are adjacent to a state park, state natural area, state forest, or wildlife management area or federally owned land and submit a recommendation of the minimum and/or maximum widths of a riparian forest buffer necessary to protect the species of wildlife which can be expected to inhabit or use the riparian forest buffer. The executive director may submit to the division a list of the more common wildlife species to be found in riparian forested zones and the recommended widths of riparian forest buffers necessary to protect the habitats of such wildlife;

SECTION 22. Tennessee Code Annotated, Title 67, Chapter 7, is amended by adding Sections 23 through 28 of this act as a new, appropriately designated part.

SECTION 23. A severance tax is hereby levied on pulpwood harvested in Tennessee. The tax shall be paid by the timber owner at the time of severance. Pulpwood shall be taxed at a percent of the current average stumpage market value of such timber at a rate to produce revenue sufficient to administer this act but in no case shall be less than three percent (3%). The commissioner shall establish conversion tables to be used for converting board feet and cords to tons for the purpose of assessing the tax. The commissioner shall determine the market value of pulpwood each year or at other intervals deemed necessary.

SECTION 24. Severance taxes shall not be owed or paid by any political subdivision of the state if such timber was owned and severed by that political subdivision for its own use.

SECTION 25. The severance tax authorized by this part shall be due and payable monthly. The timber owner shall, on or before the last day of the month following the month in which the tax is applied, submit to the department of revenue the payment and a statement on a form procured from the department, the gross quantity of pulpwood severed, the name of the

owner at time of severance, and any other reasonable and necessary information that the department of revenue may require for proper enforcement of this act.

SECTION 26. (a) If the owner shall fail to make any return or pay the full amount of tax levied on or before the date due, there shall be imposed, in addition to other penalties provided herein, a specific penalty in the amount of ten percent (10%) of the tax due. A further penalty of fifty percent (50%) of the amount due shall be added if the nonpayment of the taxes is due to an intent to evade payment.

(b) If the nonpayment of the tax is due to an intent to evade payment, the person liable for such payment shall be restrained and enjoined from severing pulpwood from all production units administered, owned or possessed by such person in the county from which such product is being or has been severed and sold, and upon which the tax is due.

SECTION 27. It shall be a violation of this act for any person required by this act to make a return, pay a tax, keep records, or furnish information deemed necessary by the state for the computation, assessment, or collection of the tax imposed by this act, to fail to make the return, pay the tax, keep the records, or furnish the information at the time required by law or regulation. It shall be a violation for any person to willfully or fraudulently make and sign a return which such person does not believe to be true and correct as to every material fact. Violations of the provisions of this part shall be punishable by a civil penalty of not more than one thousand dollars (\$1,000) per violation.

SECTION 28. Severance taxes collected shall be allocated according to the following formula:

(1) Eighty percent (80%) of the pulpwood severance tax shall be allocated to the division of forestry for the specific additional costs incurred to carry out the provisions of this act; and

(2) Twenty percent (20%) shall be returned to the local county in which the pulpwood severance took place to be used in the district from which the timber was severed, and shall be designated for road repair, erosion control, or stream repair in such district.

SECTION 29. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 30. This act shall take effect July 1, 1997, the public welfare requiring it.